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THE DELAWARE BILL OF RIGHTS OF 1776

ALTHOUGH the Delaware constitution of 1776 expressly mentions a bill of rights, declaring that "no article of the declaration of rights and fundamental rules of this State, agreed to by this convention . . . ought ever to be violated on any pretence whatever,"¹ for some inexplicable reason this bill of rights is not included by Poore in his *Charters and Constitutions*.² As Delaware was one of the first states, after the outbreak of the Revolution, to adopt a constitution and bill of rights, this document is not merely of interest, but of positive constitutional importance, and its omission by Poore is the more to be regretted because, his work having become the accepted authority for all of our former constitutions, the student of to-day is but too likely to accept the omission on his authority without further question. It is, therefore, desirable to call attention to this bill of rights, which has been too long neglected.

It can be found in several of the newspapers and periodicals of the time,³ in many of the earlier collections of state constitutions,⁴ and, most accessibly, in Force's *American Archives*.⁵ It consists of twenty-three articles, which include most of the rights formulated by Virginia and Pennsylvania, together with many of the provisions of the Maryland declaration. On reading these articles one is impressed with their likeness to the corresponding articles of the Pennsylvania and Maryland bills of rights, and the similarity is so striking as to merit a more careful consideration. In the following comparison the Delaware bill of rights is given in full, with those articles of the Maryland and Pennsylvania declarations which most closely correspond.⁶

¹ Article 30.

² Professor Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (Leipzig, 1895), p. 13, notices this omission and at the same time calls attention to the fact that a French translation of the American constitutions, which appeared in 1778, included such a bill of rights for Delaware. Professor Schouler, *Constitutional Studies*, p. 40, n. 2, also notes the omission by Poore.

³ *Pennsylvania Gazette*, October 2, 1776; *Maryland Gazette*, October 3, 1776; *The Remembrancer*; or, *Impartial Repository of Public Events, For the year 1776*, Part III. (London, 1777).

⁴ There has come within the writer's notice such a collection published in 1791 in Philadelphia by Carey, Stewart and Co., and another published as late as 1797 in Boston by Manning and Loring, in both of which it is contained.

⁵ Fifth Series, Vol. II., pp. 286, 287.

⁶ The text in each case is taken from Force's *American Archives*, Fifth Series: Delaware from Vol. II., pp. 286, 287; Pennsylvania from Vol. II., pp. 22, 23; Mary-

In Convention of the Delaware State, Wednesday, September 11, 1776, A. M.

A Declaration of Rights and Fundamental Rules of the Delaware State, formerly styled the Government of the Counties of New-Castle, Kent and Sussex, upon Delaware.

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

2. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings, and that no man ought, or of right can be compelled to attend any religious worship or maintain any ministry contrary to or against his own free will and consent, and that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship.

The Pennsylvania Declaration of Rights adopted by the Convention August 16, 1776.

The Maryland Declaration of Rights adopted by the Convention November 3, 1776.

Maryland.

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

Pennsylvania.

2. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding; and that no man ought, or of right can, be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent; nor can any man who acknowledges the being of a *God*, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can or ought to be vested in, or assumed by, any power whatever that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship and privileges.

land from Vol. III., pp. 136-139, 143-147. In the Maryland Convention the bill of rights was reported from the committee of the whole house on October 31, and the wording in several instances was modified before its final adoption on November 3. As the first draft is more nearly like the Delaware declaration, both forms have been given in this comparison. The wording in the parentheses is that of the draft reported by the committee of the whole; the changes that were made before its final adoption are italicised.

3. That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this State, unless under colour of religion any man disturb the peace, the happiness, or safety of society.

4. That the people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.

5. That persons entrusted with the Legislative and Executive powers are the trustees and servants of the publick, and as such accountable for their conduct ; wherefore, whenever the ends of Government are perverted and publick liberty manifestly endangered by the Legislative singly, or a treacherous combination of both, the people may, and of right ought to, establish a new or reform the old Government.

6. That the right in the people to participate in the Legislature is the foundation of liberty and of all free government, and for this end all elections ought to be free and frequent ; and every freeman having

Maryland.

(34) 33 . . . no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under colour of religion any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights ; etc.

Pennsylvania.

3d. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

Maryland.

4. That all persons (entrusted) *invested* with the Legislative or Executive powers of Government, are the trustees (and servants) of the publick, and as such accountable for their conduct ; wherefore, whenever the ends of Government are perverted, and publick liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new Government ; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

Maryland.

5. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free Government; for this purpose elections ought to be free and frequent, and every

sufficient evidence of a permanent common interest with, and attachment to, the community, hath a right of suffrage.

7. That no power of suspending laws or the execution of laws ought to be exercised, unless by the Legislature.

8. That for redress of grievances, and for amending and strengthening of the laws, the Legislature ought to be frequently convened.

9. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner.

10. That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him or applied to publick uses without his own consent or that of his legal representatives: nor can any man that is conscientiously scrupulous of bearing arms in any case be justly compelled thereto if he will pay such equivalent.

man having property in, a common interest with, and an attachment to, the community, ought to have a right of suffrage.

Maryland.

7. That no power of suspending laws or the execution of laws, unless *by or* derived from the Legislature, ought to be exercised or allowed.

Maryland.

10. That for the redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened.

Maryland.

11. That every man hath a right to petition the Legislature for the redress of grievances, in a peaceable and orderly manner.

Pennsylvania.

8th. That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to publick uses, without his own consent, or that of his legal representatives: nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent: nor are the people bound by any laws but such as they have in like manner assented to for their common good.

11. That retrospective laws punishing offences committed before the existence of such laws are oppressive and unjust, and ought not to be made.

12. That every freeman for every injury done him in his goods, lands, or person, by any other person, ought to have remedy by the course of the law of the land, and ought to have justice and right for the injury done to him freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

13. That trial by jury of the facts where they arise, is one of the greatest securities of the lives, liberties, and estates of the people.

14. That in all prosecutions for criminal offences, every man hath a right to be informed of the accusation against him, to be allowed counsel, to be confronted with the accusers or witnesses, to examine evidence on oath in his favour, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Maryland.

15. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty ; wherefore no *ex post facto* law ought to be made.

Maryland.

17. That every freeman for (every) *any* injury done to him in his (goods, lands, or person,) *person or property*, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

Maryland.

18. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people.

Maryland.

19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him, to have a copy of the indictment or charge in due time— if required—to prepare for his defence, to be allowed counsel, to be confronted with the witnesses against him, to have process for his witnesses, to examine the witnesses for and against him on oath, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

15. That no man in the courts of common law ought to be compelled to give evidence against himself.

16. That excessive bails ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

17. That all warrants without oath to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend all persons suspected, without naming or describing the place or any person in special, are illegal and ought not to be granted.

18. That a well-regulated Militia is the proper, natural, and safe defence of a free Government.

19. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature.

20. That in all cases and at all times the military ought to be under strict subordination to and governed by the civil power.

Maryland.

20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases (only) as have been usually practised in this State, *or may hereafter be directed by the Legislature.*

Maryland.

22. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the court of law.

Maryland.

23. That all warrants without oath, or affirmation (of a person conscientiously scrupulous of taking an oath), to search suspected places, or to seize any person, or (his) property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend (all persons suspected) *suspected persons*, without naming or describing the place, or (any) *the* person in special, are illegal, and ought not to be granted.

Maryland.

25. That a well-regulated Militia is the proper and natural defence of a free Government.

Maryland.

26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the Legislature.

Maryland.

27. That in all cases and at all times the military ought to be under strict subordination to, and control of, the civil power.

21. That no soldier ought to be quartered in any house in time of peace without the consent of the owner ; and in time of war, in such manner only as the Legislature shall direct.

22. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people.

23. That the liberty of the press ought to be inviolably preserved.

Maryland.

28. That no soldier ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only as the Legislature shall direct.

Maryland.

30. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people ; wherefore . . . etc.

Maryland.

38. That the liberty of the press ought to be inviolably preserved.

Inasmuch as the Pennsylvania bill of rights was adopted on August 16, and was printed in the *Pennsylvania Gazette* of August 21, it must have been in the hands of the members of the Delaware convention when they assembled at Newcastle one week later, and it is, therefore, evident that Delaware drew upon Pennsylvania for certain of the provisions in framing her declaration of rights.¹

The question of priority between Delaware and Maryland is not so easily disposed of. The Delaware convention met at Newcastle on the twenty-seventh of August and issued its declaration of rights two weeks later, on September 11. The convention of Maryland assembled at Annapolis on August 14 and did not adopt a bill of rights until the third of November. But among the first matters to claim the attention of the Maryland delegates was this one of a bill of rights, and among the first committees elected was one to prepare a declaration of rights and a form of government. Within two weeks after the opening of the session, on the same day that the Delaware convention first assembled, that committee reported to the convention a " Declaration and Charter of Rights ; which was read, and ordered to be printed for the consideration of the Members." This same draft, modified and amended by a committee of the whole house, was finally adopted as the declaration of rights for Maryland.²

¹ Not merely the three articles given in the above comparison, but also nine others, making practically the whole of the Pennsylvania declaration, are included in substance in Delaware's bill of rights.

² *Proceedings of the Maryland Convention*, August 17 and 27, and October 10—November 3.

It would seem, then, as if Maryland had preceded Delaware in the enunciation of those articles which their bills of rights have in common. But was such the case? A copy of the original draft presented by the committee on August 27 would at once settle the whole question, but unfortunately, although the draft was ordered to be "printed for the consideration of the people at large, and twelve copies thereof be sent without delay to each County in this State,"¹ a very thorough investigation of the accessible records and documents of Maryland has as yet failed to reveal any such copy.²

The committee's draft of a bill of rights was immediately ordered to be printed, but that was only for the use of the convention; it was not until September 17 that the order for its distribution throughout the state was passed, and six days before that date the Delaware declaration had been adopted. Therefore if the members of the Delaware convention had the benefit of Maryland's first draft in the preparation of their own bill of rights, it must have been received through private correspondence; and as in those times several days were required for the transmission of a letter from Annapolis to Wilmington, to have been of any service a copy must have been despatched immediately on the presentation of the committee's report, for only two weeks elapsed before the Delaware convention had completed its work. It is, therefore, improbable that Delaware could have profited by Maryland's declaration of rights. The members of the Maryland convention, on the other hand, had every opportunity to avail themselves of the Delaware bill of rights. It was printed in full in the *Maryland Gazette* of October 3, and they did not take up the consideration of their committee's report until October 10.³ And though they deliberated on this subject almost daily in committee of the whole, they did not complete their labors until the thirtieth,⁴ so that ample time was given for changes to any extent that the convention might have seen fit to make. And that very extensive changes were made appears from the motion of one of the members that before its final adoption the bill of rights be reprinted, because the draft "formerly printed for the consideration of the Members of the Convention had been materially altered by a Committee of the Whole House."⁵

Furthermore, it must be remembered that the rights which the

¹ *Ibid.*, September 17.

² The writer is under great obligations to Mr. St. George L. Sioussat of Baltimore for his prosecution of these investigations in that city, and also for valuable suggestions upon several points in this article.

³ *Proceedings of the Maryland Convention*, October 10.

⁴ *Ibid.*, October 10-30.

⁵ *Ibid.*, October 30.

states were proclaiming at that time were not regarded by them as provisions that were valid only within their respective boundaries ; they were declaring principles of universal application.¹ Accordingly what Virginia had declared in her bill of rights Pennsylvania also declared, changing the language and adding somewhat, but omitting only such as apparently seemed superfluous, because they had already been affirmed in the English Bill of Rights. And the principles which Virginia and Pennsylvania had announced were included in the bills of rights of Delaware and Maryland. That Maryland's declaration included all of the rights proclaimed by Delaware, while Delaware's declaration did not include all of those proclaimed by Maryland, certainly argues in favor of a later date for the Maryland instrument.

If, then, we accept what seems to be the more probable, indeed almost certain conclusion that it was Maryland which was indebted to Delaware, and not Delaware to Maryland, for those rights which the two states enunciated in such similar language, and if we decide that it was when the Maryland convention was considering the bill of rights in committee of the whole that the articles of the Delaware declaration were inserted, we have a ready explanation of the fact that the draft as reported from that committee bears a closer resemblance to the Delaware bill of rights than the form finally adopted, after the articles had been somewhat modified on a second consideration.

MAX FARRAND.

¹ Bancroft, *History of the United States* (Author's Last Revision), IV. 419.